

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION**

**ECOLAB Inc., and NALCO  
COMPANY, LLC d/b/a Nalco  
Water, an Ecolab Company and/or  
Nalco Water,**

**Plaintiffs,**

**v.**

**SIMON WALKER,**

**Defendant.**

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**Case No. 7:22-cv-1469-LSC**

**ANSWER TO FIRST AMENDED COMPLAINT**

COMES NOW Defendant Simon Walker and hereby answers Plaintiffs' First Amended Complaint for Injunctive Relief, Damages, and Other Relief as follows:

**NATURE OF ACTION**

1. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
2. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
3. Admitted.
4. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

**PARTIES**

5. On information and belief, admitted.
6. On information and belief, admitted.
7. Admitted.

**JURISDICTION AND VENUE**

8. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
9. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
10. Admitted as to residence. Defendant lacks sufficient information to admit or deny the rest of the averments of this paragraph and, therefore, same is denied.
11. Admitted as to residence. Defendant lacks sufficient information to admit or deny the rest of the averments of this paragraph and, therefore, same is denied.
12. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
13. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

14. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
15. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
16. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
17. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
18. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
19. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
20. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
21. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
22. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
23. Admitted.
24. Admitted.

25. Admitted.
26. Denied as there is no Employment Agreement attached.
27. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
28. Deny as there is no Employment Agreement attached.
29. Deny as there is no Employment Agreement attached.
30. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied. Also, there is no Employment Agreement attached.
31. Deny as there is no Employment Agreement attached.
32. Deny as there is no Employment Agreement attached.
33. Deny as there is no Employment Agreement attached.
34. Deny as there is no Employment Agreement attached.
35. Deny as there is no Employment Agreement attached.
36. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
37. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.
38. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

39. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

40. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

41. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

42. Denied.

43. Denied.

44. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

45. Denied.

46. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied. There is no exhibit attached.

47. Admitted as to Transition Agreement execution.

48. Denied.

49. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

50. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

51. Denied as to defendant providing confidential information and assistance to ChemTreat in obtaining Nucor-Tuscaloosa's business.

52. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied. Deny as to assistance from defendant Walker.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

### **COUNT 1**

63. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

64. Deny.

65. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

66. Denied.

67. Denied.

68. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

69. Deny.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

## **COUNT II**

76. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

77. Denied.

78. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

79. Denied.

80. Denied.

81. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

### **COUNT III**

89. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

90. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

91. Defendant lacks sufficient information to admit or deny the averments of this paragraph and, therefore, the same are denied.

92. Denied.

93. Denied.



**COUNT IV**

- 94. Denied.
- 95. Denied.
- 96. Denied.
- 97. Denied.
- 98. Denied.
- 99. Denied.
- 100. Denied.
- 101. Denied.

**COUNT V**

- 102. Defendant incorporates by reference, as if fully stated herein, his responses and defenses set forth in the preceding paragraphs.

- 103. Denied.
- 104. Denied.
- 105. Denied.
- 106. Denied.
- 107. Denied.
- 108. Denied.

**COUNT VI**

109. Denied.

110. Denied.

111. Denied.

112. Denied.

### **COUNT VII**

113. Denied.

114. Denied.

115. Denied.

116. Denied.

As to the unnumbered paragraphs, and subparagraphs thereto, immediately following paragraph 116, Defendant denies that Plaintiffs are entitled to the relief sought.

### **DEFENSES**

#### **First Affirmative Defense**

The Complaint fails to state a claim upon which relief can be granted.

#### **Second Affirmative Defense**

Defendant denies the material allegations of the Complaint and demands strict proof thereof.

#### **Third Affirmative Defense**

Plaintiffs cannot meet their burden with respect to each and every element of the causes of action alleged in the Complaint.

#### **Fourth Affirmative Defense**

Any alleged damage to Plaintiffs were not proximately caused by any act or omission on the part of Defendant.

#### **Fifth Affirmative Defense**

Defendant pleads the affirmative defenses of laches, statute of frauds, estoppel, consent, waiver, parol evidence, failure of consideration, contributory negligence, duress, illegality, and collateral estoppel.

#### **Sixth Affirmative Defense**

Defendant reserves the right to amend this Answer and/or assert additional defenses if facts come to light in this matter so as to warrant the assertion of additional defenses.

#### **Seventh Affirmative Defense**

If and to the extent any allegation requiring a denial from Defendant is not denied in the foregoing Answer, Defendant denies the same and demands strict proof thereof.

#### **Eighth Affirmative Defense**

Plaintiffs have sustained no damage from any of the alleged actions of Defendant in their First Amended Complaint and is therefore due no recovery.

### **Nineth Affirmative Defense**

The Employee Sales, Service, Marketing & Inventions Agreement attached as Exhibit A to Plaintiffs' First Amended Complaint contains unenforceable contractual provisions and therefore cannot form the basis of Plaintiffs' requested relief.

### **Tenth Affirmative Defense**

Many of the documents and information that Plaintiffs allege Defendant misappropriated are made up of publicly available information and are personal documents and photos that belong to Defendant and therefore cannot form the basis of violation of the Defend Trade Secrets Act claim or an Alabama Trade Secrets Act (Ala. Code § 8-27-1, *et seq.*).

### **Eleventh Affirmative Defense**

Plaintiffs have failed to keep secret the documents and information that it alleges are trade secrets and/or confidential information and/or has not taken reasonable steps to protect the confidentiality of the information.

### **Twelfth Affirmative Defense**

Plaintiffs have failed to maintain or preserve key evidence in this matter which it references and relies upon in its First Amended Complaint and Plaintiffs' claims are therefore barred due to its spoliation of key evidence.

### **Thirteenth Affirmative Defense**

Defendant has relinquished control of all information, email accounts, social media accounts, phones, external hard drives and/or flash drives, cloud-storage accounts, and all electronic devices to Plaintiffs' expert which may have contained any of Plaintiffs' information that was downloaded by Defendant.

#### **Fourteenth Affirmative Defense**

The Transition Agreement attached as Exhibit B to Plaintiffs' First Amended Complaint contains unenforceable contractual provisions and therefore cannot form the basis of Plaintiffs' requested relief.

#### **Fifteenth Affirmative Defense**

Plaintiffs' claims fail, in whole or in part, because Plaintiffs have not exercised reasonable and sufficient efforts to maintain the secrecy of any information alleged in the First Amended Complaint.

#### **Sixteenth Affirmative Defense**

Plaintiffs' claims fail due to Plaintiffs' failure to mitigate damages.

#### **Seventeenth Affirmative Defense**

Plaintiffs' request for injunctive relief is barred because Plaintiffs have not demonstrated a need or met the legal criteria for injunctive relief, including a likelihood of success on the merits, a risk or irreparable harm, or that the interests of justice or balance of harms favor injunctive relief.

### **Eighteenth Affirmative Defense**

Plaintiffs request for injunctive relief is barred based on the existence of an adequate remedy at law.

### **Nineteenth Affirmative Defense**

Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

### **Twentieth Affirmative Defense**

Plaintiffs' claims are barred by the doctrine of offset.

### **Twenty-First Affirmative Defense**

Plaintiffs' claim of punitive damages violates the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the Constitution of the United States, and Article I, Section 6 of the Constitution of Alabama on the following grounds:

(a) It is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiff's satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(b) The procedures pursuant to which punitive damages are awarded in this state constitute an unconstitutional impediment, infringement and restraint to defendant's rights under the Commerce Clause of the United States Constitution;

(c) The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against defendant, which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

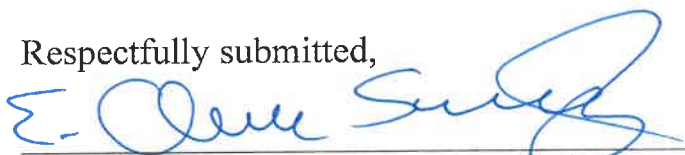
(d) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

(e) The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts and, thus, violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

(f) The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

Done this the 7<sup>th</sup> day of June, 2023.

Respectfully submitted,



E. Clark Summerford (ASB-4117-R64E)  
ZEANAH, HUST, SUMMERFORD  
WILLIAMSON & COX

By: /s/ E. Clark Summerford

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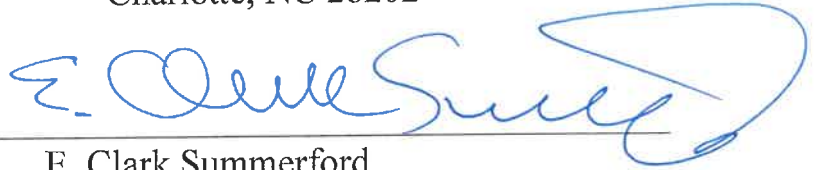
*Attorney for defendant, Simon Walker*

### **CERTIFICATE OF SERVICE**

I hereby certify that on June 6, 2023 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF electronic filing system which will give notice of such filing to the following:

Mr. Edward F. Harold  
Fisher & Phillips, LLP  
201 St. Charles Avenue, Suite 3710  
New Orleans, LA 70170

Mr. J. Michael Honeycutt  
Fisher & Phillips, LLP  
227 West Trade Street, Suite 2020  
Charlotte, NC 28202



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